

1 Daniel A. Lev (CA Bar No. 129622)
dlev@sulmeyerlaw.com

2 **SulmeyerKupetz**
A Professional Corporation

3 333 South Grand Avenue, Suite 3400
Los Angeles, California 90071-1406

4 Telephone: 213.626.2311
Facsimile: 213.629.4520

5
6 Ronald Richards (CA Bar No. 176246)
ron@ronaldrichards.com

7 Law Offices of Ronald Richards & Associates, APC
P.O. Box 11480

8 Beverly Hills, California 90213
Telephone: 310.556.1001

9 Facsimile: 310.277.3325

10 Attorneys for Shady Bird Lending, LLC

11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

13
14 In re

15 THE SOURCE HOTEL, LLC,

16 Debtor.

Case No. 8:21-bk-10525-ES

Chapter 11

**OPPOSITION OF SHADY BIRD
LENDING, LLC TO MOTION FOR
ORDER EXTENDING DEBTOR'S
EXCLUSIVE PERIODS TO FILE PLAN
OF REORGANIZATION AND OBTAIN
ACCEPTANCES THEREOF;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
RONALD RICHARDS IN SUPPORT
THEREOF**

DATE: June 10, 2021

TIME: 10:30 a.m.

PLACE: Courtroom "5A"

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

Shady Bird Lending, LLC (“Shady Bird”) hereby submits its “Opposition of Shady Bird Lending, LLC to Motion for Order Extending Debtor’s Exclusive Periods to File Plan of Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of Ronald Richards in Support Thereof” (the “Opposition”), in response to the “Notice of Motion and Motion for Order Extending Debtor’s Exclusive Periods to File Plan of Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of Donald Chae in Support Thereof” (the “Motion”), filed by the debtor and debtor in possession, The Source Hotel, LLC (the “Debtor”), and represents as follows:

I.

PREFATORY STATEMENT

The Debtor has been in chapter 11 for nearly four months. During that time, other than borrowing money from an affiliated entity, it has failed to do anything that should give this Court or creditors confidence in how it intends to emerge from this case. In derogation of the intricate balance Congress struck between the dual interests of debtors and creditors,¹ the Debtor provides little (if anything) to justify any extension, much less ninety days.

The Debtor attempts to substantiate its request by again shifting the blame for its procrastination to Shady Bird. According to the Debtor, since it was required to devote a “substantial” amount of time addressing Shady Bird’s motions, it has not had “adequate” time to focus on preparing its plan of reorganization. This excuse rings hollow, since the Debtor has been in default of its loan since 2019 and has had ample time to secure debtor in possession or exit financing or identify a potential buyer for the hotel, especially based on the valuations it continues to tout. So although the Debtor’s

¹ See In re Southwest Oil Co. of Jourdan, Inc., 84 B.R. 448, 450 (Bankr. W.D. Tex. 1987) (explaining that the Section 1121 exclusivity period “represents a compromise between the dual goals of giving the debtor time to reorganize and protecting the creditors’ legitimate interests”).

1 counsel certainly may have been somewhat occupied responding to motions and
2 attending to the ministerial tasks required in chapter 11, this has no bearing on what the
3 Debtor or the Chae's have been doing (or not doing) both prior to and during this chapter
4 11 case.

5 The fact remains that no appropriate grounds exist for the extension.

6 II.

7 **THE DEBTOR'S FACTUAL RECITATION CONTAINS NUMEROUS ERRORS AND**
8 **MISSTATEMENTS WHICH SHOULD BE DISREGARDED**
9 **IN RESOLVING THE MOTION**

10 Heeding the Court's concerns that the parties have been engaging in an
11 unnecessary war of words, Shady Bird will not spend the time to correct the numerous
12 inaccuracies and misrepresentations meant to perpetrate the myth that, but for the
13 conduct of Shady Bird and its predecessor, Evertrust, the hotel would have been finished
14 by now.² Shady Bird already has demonstrated the falsity of these accusations, as well
15 as the representation that the hotel is basically complete, other than "finish work." The
16 Court has seen detailed reports from the Receiver and her consultants undermining
17 these statements.

18 As an important reminder, Shady Bird had Mr. Chae sign a pre-negotiation
19 letter before there was ever a first meeting. This clearly removed any risk that the oral
20 discussions between the lender and the borrower could turn into actionable claims. As
21 such, the parties were free to talk without fear of claims against one another. Mr. Chae
22 only has his lack of business management to blame for the Debtor's predicament, not the
23 assignee who purchased a defaulted debt instrument.

24
25 _____
26 ² Unless otherwise stated, the use of capitalized terms herein shall have the meaning ascribed to them in
27 the "Notice of Motion and Motion for Order Extending Debtor's Exclusive Periods to File Plan of
28 Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of
Donald Chae in Support Thereof" (the "Motion").

Instead of focusing on excuses and overly optimistic views of what the Debtor hopes to do in the future, the Court should focus on what the Debtor has failed to accomplish during the four months it has been in chapter 11, and whether it is deserving of any more time when Shady Bird stands ready to propose its own plan of reorganization. When the Court does so, it will agree with Shady Bird that the plan process must be opened up to other parties.

NO VALID BASIS EXISTS TO EXTEND THE PLAN EXCLUSIVITY PERIODS

1 obtain an extension only if it can show ‘cause.’”).³ “[A]ffirmative answers to a number of
2 the inquiries listed in Dow Corning [...] do not necessarily favor extending exclusivity.”
3 Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem. Hosp. (In re Henry
4 Mayo Newhall Hosp.), 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002). Although the Court
5 refused to designate this case as a SARE, in all practicalities that is exactly what this
6 case is, and the Debtor has had four months to accomplish what the Code requires a
7 SARE debtor to accomplish in 90 days.

8 In short, the Debtor simply fails to satisfy its burden of demonstrating
9 “cause” under the Dow Corning test it has embraced. Moreover, even if the Debtor had
10 shown cause, the

11 circumstances of this case dictate that an extension not be
12 granted. There are two key operative phrases within §
13 1121(d). The court ‘may’ and ‘for cause’ extend the
14 exclusivity period. The use of the term ‘may’ instead of
15 ‘shall’ clearly allows the bankruptcy court great latitude in the
16 exercise of its discretion whether or not to extend the
17 exclusivity period. In exercising its discretion, the court may
18 extend the exclusivity period if sufficient cause is shown.
19 Conversely, the court may refuse to extend the exclusivity
20 period even if there is a showing of cause.

21 The second operative phrase within § 1121(d), ‘for cause’
22 means that the court may only exercise its discretion after a
23

24 ³ The relevant inquiries under Dow Corning are: (1) the size and complexity of the case; (2) the necessity of
25 sufficient time to negotiate and prepare adequate information; (3) the existence of good faith progress
26 toward reorganization; (4) whether the debtor is paying its debts as they come due; (5) whether the debtor
27 has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress
28 in negotiating with creditors; (7) the length of time the case has been pending; (8) whether the debtor is
seeking the extension to pressure creditors; and (9) whether unresolved contingencies exist. Dow Corning,
208 B.R. at 670.

1 party in interest establishes sufficient cause. The absence
2 of an adequate definition of the phrase ‘for cause’ in this
3 matter is significant. In essence, Congress has left the
4 meaning of the phrase ‘for cause’ to be determined by the
5 facts and circumstances in each individual case.

6 Sharon Steel, 78 B.R. at 763-764.

7 The circumstances of this case which dictate that the Court deny the
8 Debtor’s request for an extension of exclusivity include, among other things, the
9 following: (i) this is, for all intents and purposes, a single asset real estate case even if
10 the Court did not choose to apply the SARE definition found in 11 U.S.C. § 101(51B); (ii)
11 the Debtor has failed to move the plan process forward in this case on a diligent basis;
12 (iii) denial of the Debtor’s request for extension of exclusivity does not prejudice the
13 Debtor’s right to pursue confirmation of an appropriate plan, to seek DIP or exit financing,
14 or to seek a sale; (iv) this is not an unusually large or complex case; and (v) the Debtor
15 should not be allowed to use an extension of exclusivity as a tactical device to pressure
16 creditors to accept the Debtor’s contemplated plan when other parties, including Shady
17 Bird, are willing to put a plan before the Court and creditors for confirmation.

18 Here, the lapse of exclusivity would also eliminate any concerns that the
19 Debtor’s request for an extension of exclusivity is designed to pressure creditors to
20 submit to its reorganization demands. Dow Corning, 208 B.R. 661, 664-65 (Bankr. E.D.
21 Mich. 1997) (finding one factor to consider in determining whether to extend exclusivity is
22 “whether the debtor is seeking an extension of exclusivity in order to pressure creditors to
23 submit to the debtor’s reorganization demands”). Even if the Debtor does not intend to
24 use an extension of the 180-day exclusivity period as a tactical device to pressure
25 creditors, this would be the consequence of granting an extension.

26 [S]uch an extension would have the result of continuing to
27 hold creditors hostage to the Chapter 11 process and
28 pressuring them into accepting a plan they believe to be

1 unsatisfactory. . . . While the court does not believe that
2 debtor filed its motion with this purpose in mind, it does
3 appear that this will be or may be one of the unintended
4 consequences of granting the request.

5 All Seasons, 121 B.R. at 1006.

6 The Debtor certainly will not be prejudiced by the lapse of its exclusivity.
7 Whether or not exclusivity is in place, the Debtor can move forward, assuming that it is
8 able to submit a disclosure statement containing adequate information and that it is able
9 to submit a confirmable plan. Denial of the Debtor's request to extend the 180-day
10 exclusivity period will not in any way prevent the Debtor from pursuing confirmation of a
11 plan (assuming adequate disclosure is provided), it will not prevent the Debtor from
12 pursuing the host of exit strategies referenced in the Motion, and it will not prevent the
13 Debtor from negotiating with creditors. In fact, denial of the Motion would foster
14 negotiations between the Debtor and its key constituents, such as Shady Bird, the City of
15 Buena Park (the "City"), and mechanic's lien holders, who are concerned with the lack of
16 progress since the loan went into default and the Debtor entered chapter 11.

17 This is especially true since, as mentioned, Shady Bird will fill the void and
18 submit its own plan once exclusivity is denied. Creditors are entitled to see what other
19 parties have to offer in the absence of anything other than the Debtor's hopes and
20 prayers. As such, denial of the Motion will not impose a deadline on the Debtor for
21 confirming a plan or even for proposing an acceptable plan but, in fact, it may actually
22 result in the Debtor submitting a plan earlier if it knows that there will be a competing plan
23 from Shady Bird.

24 Denial of the Motion, in other words, will not prejudice the legitimate
25 interests of the Debtor to exit chapter 11.

26 Denying an extension in this case does not affect the debtors'
27 ongoing right to file a plan. The fact that the debtors no
28 longer have the exclusive right to file a plan does not affect

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 their concurrent right to file a plan. . . . By denying the
2 extension, the Court does not prejudice the debtors' co-
3 existent right, nor dilute the debtors' duty to file a plan. The
4 other parties are simply allowed to protect their interests by
5 coming forward with alternative plans. . . .
6 Section 1121 does not create a deadline for filing a plan.
7 The debtors may develop and file their plan or plans as they
8 feel appropriate. The risk that while the debtors are
9 developing their plan, another party in interest may file a
10 plan, is a risk that Congress intended, so as to preserve the
11 balance between a debtors' needs and the legitimate
12 interests of creditors. . . . Further, if the debtors' concerns
13 are correct, and the objecting creditors file a plan which
14 would prevent the debtors from going forward with the
15 pending lawsuit, the debtors and other creditors can object
16 to confirmation on any number of grounds. Filing such a
17 plan does not guaranty confirmation.

18 In re Southwest Oil Company of Jourdanton, Inc., 84 B.R. 448, 454 (Bankr. W.D. Tex.
19 1987); see also All Seasons, 121 B.R. at 1005.

20 It is time that the Court open up the process in this case so that the parties
21 will have a chance to work toward a confirmable plan of reorganization.

22 [T]he playing field should be leveled so that all the players,
23 including the debtor, will now have an even chance in
24 proposing a reorganization plan which might be acceptable
25 to the creditors in this case. Accordingly, the debtor's motion
26 to extend the plan exclusivity period is denied because the
27 debtor has not satisfied its burden of establishing that cause
28 exists for the requested extension.

1 In re General Bearing Corp., 136 B.R. 361, 367 (Bankr. S.D.N.Y. 1992). See also In re
2 Eua Power Corporation, 130 B.R. 118, 118-119 (Bankr. D. N.H. 1991) (“[I]t is essential to
3 open up the plan process in this case to competing plans to achieve a number of results
4 that will foster hopefully a consensual reorganization or at any rate force movement
5 towards a reorganization that might be confirmed by the court.”).

6 As noted, the Debtor simply cannot meet its burden for receiving additional
7 time under the Dow Corning test.

8 **A. The Debtor’s Case is Neither Large Nor Complex**

9 The Debtor claims that “[g]iven the aggregate value of the Hotel and FF&E,
10 and the amount of claims asserted against the Debtor, the Debtor’s bankruptcy case is
11 neither a small nor simple chapter bankruptcy case.” The opposite is true: nothing about
12 the size and complexity of this case warrants an extension. Shady Bird does not dispute
13 that courts have granted extensions of plan exclusivity periods (even serial extensions)
14 based on the size and complexity of a case. Shady Bird disputes, however, that the
15 Debtor’s case is among those types of cases.

16 This is not a large conglomerate, like Texaco, or Dow Corning, or Johns-
17 Manville, or any of the recent large retailers which were forced to file chapter 11 due to
18 the COVID-19 pandemic. This is a single real estate project which has been in a state of
19 partial construction for the past seven years, and has the typical debt associated with
20 such a real estate enterprise, namely, secured debt, mechanic’s liens, and trade debt.⁴
21 Although certain courts have refused to limit extensions of plan exclusivity periods to
22

23
24 ⁴ The Debtor repeatedly states that it must allow the claims bar date to pass before it can finalize the terms
25 of a feasible plan and negotiate plan terms with its creditors. This argument is nonsensical. The Debtor
26 filed detailed schedules listing its secured and unsecured creditors which, presumably, were based on the
27 Debtor’s books and records. Therefore, while certain creditors may adjust their claims upwards or
28 downwards, it is highly unlikely that any claim will differ dramatically from what the Debtor placed in its
schedules. And since the notice of the claims bar date was only served on the creditors listed by the
Debtor, it is equally unlikely that some mysterious creditor will emerge and file a claim that the Debtor was
unaware of. The Debtor, therefore, has more than enough information regarding its claimholders with
which to formulate and file a plan.

1 “mega cases,” at least some form of complexity must be present. Nothing of the sort
2 exists here.

3 **B. The Debtor Has Not Properly Utilized Its Time to Negotiate a Plan or**
4 **Prepare Adequate Information, and Otherwise Has Not Made Sufficient**
5 **Progress Towards Formulation of a Plan**

6 Peppered throughout the Motion are the Debtor’s claims that it has been
7 unable to work diligently to fashion a chapter 11 plan and negotiate with creditors since it
8 has been too busy responding to Shady Bird’s motions. This excuse is just that, an
9 excuse. Chapter 11 debtors are often confronted with numerous motions filed by
10 affected parties, and the mere fact that Shady Bird filed three motions in the relatively
11 early stages of the case has not prevented the Debtor or the Chae’s from undertaking the
12 steps necessary to develop a plan to exit chapter 11.

13 As a reminder, the chapter 11 filing was not a surprise. The Debtor
14 defaulted on its loan in 2019, allowed numerous forbearance periods to lapse without
15 addressing the debt or locating either new financing, investors, or a buyer, and only filed
16 chapter 11 to stave off a noticed foreclosure sale. An additional four months has now
17 passed and the Debtor still portrays itself as the victim. Only the Debtor is to blame for
18 not having accomplished the necessary steps to complete construction or pay off its
19 existing indebtedness. Shady Bird has actually enhanced, not harmed, the project and
20 the estate, and the Debtor should not be permitted to benefit from the delay that it alone
21 caused.

22 The Motion should be denied even if the Court accepts the Debtor’s
23 representations of alleged progress. First, as illustrated before, a denial of the Motion
24 “does not sound a death knell for debtor[s] reorganization.” All Seasons, 121 B.R. at
25 1005. “Denying such a motion only affords creditors their right to file the plan; there is no
26 negative effect upon the debtor[s]’ co-existing right to file its plan.” Id., at 1005. Second,
27 and more importantly, the concomitant threat of other plans that a denial of the Motion
28 brings will have the salutary effect of “caus[ing] the debtor to come forward more quickly

1 than he might otherwise.” Mayo, 282 B.R. at 453. In other words, denial of the Motion
2 likely will increase the speed at which the Debtor finalizes its exit strategy and related
3 negotiations, and presents a plan.

4 **C. The Debtor Has Not Demonstrated Any Prospects for Filing a Viable**
5 **Plan**

6 To obtain an extension of the plan exclusivity periods a “debtor in a Chapter
7 11 case is also required to demonstrate that there is a reasonable probability that it will
8 be able to propose a plan that will result in a successful reorganization within a
9 reasonable time.” Southwest Oil, 84 B.R. at 451-52; Mayo, 282 B.R. at 452. “A
10 reasonable probability cannot be grounded solely on speculation.” Southwest Oil, 84
11 B.R. at 451-52. The Debtor has not made any demonstration regarding its prospects for
12 filing an appropriate plan, and its request for an extension is based solely on speculative
13 efforts to obtain financing. The Motion does not even allege, much less establish, that
14 the Debtor has any prospects for proposing a workable plan, other than vague and
15 unverifiable references to searching for investors, DIP or exit financing, or a buyer.
16 Indeed, the Motion is premised almost entirely on the notion that the Debtor has not had
17 sufficient time to finalize the work it needs to do in order to ascertain whether it has a plan
18 in the making. This is an excuse the Court should reject.

19 **D. The Remaining Dow Corning Factors Do Not Support Granting an**
20 **Extension of the Exclusivity Periods**

21 As highlighted earlier, other factors considered on requests for extension of
22 plan exclusivity periods include: (i) the existence of good faith; (ii) whether the debtor is
23 paying its bills timely; (iii) the amount of time that has elapsed in the case; (iv) whether
24 the debtor is seeking an extension to pressure creditors to submit to demands; and (v)
25 whether any unresolved contingencies exist. As briefly addressed, each of these factors
26 either is neutral or otherwise does not support the Debtor’s current request.

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 **1. The Existence of Good Faith**

2 At this time, Shady Bird is not contending that the Debtor is not operating
3 this case other than in good faith. Shady Bird, however, notes the following issues of
4 concern. First, Shady Bird continues to press the Court to allow the hotel to remain in the
5 Receiver's capable hands until the Debtor can locate sufficient exit financing, a buyer, or
6 present a confirmable plan. Merely stating that the Debtor has met with prospective
7 lenders and investors is meaningless in the absence of a term sheet or commitment letter
8 evidencing how the Debtor intends to extricate itself from chapter 11.

9 Shady Bird also has expressed its concerns with the Court regarding the
10 quality and competency of the Debtor's management. Shady Bird still has numerous
11 questions regarding the Debtor's ability to secure any form of financing or locate
12 construction financing, which is threatening the Debtor's underlying agreements with the
13 City and places the hotel project in peril. Permitting a competing plan to be filed will allow
14 these serious issues to be addressed.

15 **2. Timely Payment of Bills**

16 The undisputed fact that the Debtor is timely paying its bills is a non-issue,
17 for the simple fact that there are few, if any, bills to be paid. As a reminder, Shady Bird
18 gifted \$200,000 to the estate to ensure that immediate and necessary repairs to the
19 project were made. But for this advance, nothing would be happening at the project other
20 than maintaining basic utility service and security. In other words, it is Shady Bird and
21 the Receiver, not the Debtor, who is ensuring that the bills are being paid timely.

22 **3. The Amount of Time That Has Elapsed**

23 This case has been pending for nearly four months, which, when added to
24 the length of time the Debtor has had since it defaulted, has provided the Debtor with a
25 sufficient runway to obtain whatever investor or lender financing it needs to restart
26 construction and resolve its sizable claims. The Debtor has not shown what it can
27 realistically accomplish if provided an extra ninety days, and how it will be prejudiced in
28 any way if the Motion is denied and the plan process is opened up to other parties.

1 **4. Pressure On Creditors**

2 This factor considers whether a debtor's request for an extension is
3 designed to put pressure on creditors to have them accede to the debtor's reorganization
4 demands. Shady Bird is not aware of any overt attempts by the Debtor to use the Motion
5 for that purpose. However, this may be simply because, at this time, the Debtor has yet
6 to formulate a plan in order to make any such demands. In other words, this factor only
7 further highlights the Debtor's lag in progressing towards reorganization.

8 **5. There Are No Unresolved Contingencies**

9 As far as Shady Bird is concerned, no unresolved contingencies exist. The
10 fact that Shady Bird's relief from stay motion remains pending cannot possibly justify the
11 Debtor sitting on its hands and letting its initial exclusivity period tick on by without
12 availing itself of whatever avenues for exiting chapter 11 may exist. Even if it might be
13 premature to file a plan, it certainly is not premature to prepare a plan that can be quickly
14 disseminated if relief from stay is denied. Again, this is a lame excuse meant to place the
15 blame for the Debtor's inaction squarely on Shady Bird's shoulders. Therefore, it would
16 be entirely unjust to allow the Debtor to rely on a pending relief from stay motion to obtain
17 the requested extension.

18 **6. The Debtor Has No Support From the City**

19 The Debtor certainly cannot tout that it has the unwavering support of the
20 City, as the City has now withdrawn its "Opposition By the City of Buena Park to Shady
21 Bird Lending, LLC's Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362."⁵
22 The City, therefore, has no opposition to Shady Bird foreclosing on the project. The City
23 has cancelled all contracts and permits with the Debtor, and the Debtor has supplied no
24 evidence demonstrating that it will ever repair its relationship with the City. The Debtor

25 _____
26 ⁵ Pursuant to Rule 201 of the Federal Rules of Evidence, the Court is respectfully requested to take judicial
27 notice of the "Notice of Immediate Withdrawal of Opposition By the City of Buena Park to Shady Bird
28 Lending, LLC's Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362" filed on May 26, 2021
[Docket No. 143].

1 also has provided no evidence that any “flag” hotel will continue to work with the Debtor
2 on the project. The City’s withdrawal shows implicitly that the only party that can save
3 this project is Shady Bird, not the Debtor. Freeing up the plan process to allow Shady
4 Bird to propose a plan will expedite the project’s completion.

5 **7. Shady Bird Has \$25,052,359.99 Available to Complete the Hotel**

6 As the declaration of Ronald Richards, affixed hereto, confirms, Shady Bird
7 has committed \$25,052,359.99 to complete the hotel and the funds are in its general
8 operating account. The only way for this troubled asset to come to fruition is for Shady
9 Bird to immediately start construction. This requires either that relief from stay be
10 granted, or that Shady Bird be permitted to file a plan to achieve this result. The
11 prejudice to the City and the other creditors is severe, and another six months could kill
12 the market and result in nothing but an eyesore on the City’s landscape. The Debtor’s
13 request for additional time to exclusively file a plan is, under the circumstances, an
14 unreasonable request. The Debtor has no support from anyone to finish this project and
15 none was listed in the Motion. The exclusivity period is a natural marker and the Debtor
16 has not presented any justification to continue that period at all.

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IV.

CONCLUSION

Since there is no credible evidence warranting an extension, the Court should deny the Motion and permit other vested creditors, such as Shady Bird, the opportunity to propose a plan which will accomplish what the Debtor simply is unable or unwilling to do - provide an end date with a meaningful distribution to each class of creditors.

DATED: May 27, 2021

SulmeyerKupetz
A Professional Corporation

By: /s/ Daniel A. Lev

Daniel A. Lev
Attorneys for Shady Bird Lending, LLC

DATED: May 27, 2021

Law Offices of Ronald Richards & Associates, APC

By: /s/ Ronald Richards

Ronald Richards
Attorneys for Shady Bird Lending, LLC

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

DECLARATION OF RONALD RICHARDS

I, Ronald Richards, declare and state as follows:

1. At all times relevant hereto, I have been the non-member, manager for Shady Bird Lending, LLC, a California limited liability company ("Shady Bird"). In this capacity, I have personal knowledge of the facts set forth in this declaration, and if called as a witness for this purpose, I could and would testify competently under oath to them.

2. I make this declaration in support of the "Opposition of Shady Bird Lending, LLC to Motion for Order Extending Debtor's Exclusive Periods to File Plan of Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of Ronald Richards in Support Thereof" (the "Opposition") in response to the "Notice of Motion and Motion for Order Extending Debtor's Exclusive Periods to File Plan of Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of Donald Chae in Support Thereof" (the "Motion"), filed by the debtor and debtor in possession, The Source Hotel, LLC (the "Debtor").

3. I am not a member or owner of Shady Bird, but I am the only one who is authorized to execute settlements or act on behalf of the entity.

4. Based on recent discussions between Shady Bird and the City of Buena Park (the "City"), the City has withdrawn its "Opposition By the City of Buena Park to Shady Bird Lending, LLC's Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362." The City, therefore, has no opposition to Shady Bird foreclosing on the project. The City has cancelled all contracts and permits with the Debtor, and the Debtor has supplied no evidence demonstrating that it will ever repair its relationship with the City. The Debtor also has provided no evidence that any "flag" hotel will continue to work with the Debtor on the project. The City's withdrawal shows implicitly that the only party that can save this project is Shady Bird, not the Debtor. Freeing up the plan process to allow Shady Bird to propose a plan will expedite the project's completion.

5. In this regard, Shady Bird has committed \$25,052,359.99, which is available in its general operating account, to complete construction of the hotel.

1 Conversely, the Debtor neither has the available funds nor support of the City to finish the
2 project.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed this 27th day of May, 2021, at Los Angeles, California.

6
7 /s/ Ronald Richards

Ronald Richards

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **OPPOSITION OF SHADY BIRD LENDING, LLC TO MOTION FOR ORDER EXTENDING DEBTOR'S EXCLUSIVE PERIODS TO FILE PLAN OF REORGANIZATION AND OBTAIN ACCEPTANCES THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RONALD RICHARDS IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 27, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) May 27, 2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Overnight Mail

The Honorable Erithe A. Smith
U.S. Bankruptcy Court
Ronald Reagan Federal Building
411 W. Fourth Street, Suite 5040
Santa Ana, CA 92701

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 27, 2021

Date

Cheryl Caldwell

Printed Name

/s/Cheryl Caldwell

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Ron Bender on behalf of Debtor The Source Hotel, LLC
rb@lnbyb.com

Christopher G. Cardinale on behalf of Creditor City Of Buena Park
ccardinale@agclawfirm.com

Michael G Fletcher on behalf of Creditor Evertrust bank
mfletcher@frandzel.com, sking@frandzel.com

Amir Gamliel on behalf of Interested Party Courtesy NEF
amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com

Robert P Goe on behalf of Creditor Westranco, Inc.
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

Peter F Jazayeri on behalf of Interested Party Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Peter F Jazayeri on behalf of Other Professional Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Daniel A Lev on behalf of Creditor Shady Bird Lending, LLC
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Daniel A Lev on behalf of Interested Party Courtesy NEF
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Grant A Nigolian on behalf of Interested Party Courtesy NEF
grant@gnpclaw.com, process@gnpclaw.com;grant.nigolian@gmail.com

Juliet Y Oh on behalf of Debtor The Source Hotel, LLC
jyo@lnbrb.com, jyo@lnbrb.com

Ho-El Park on behalf of Interested Party Courtesy NEF
hpark@hparklaw.com

Ronald N Richards on behalf of Creditor Shady Bird Lending, LLC
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Interested Party Courtesy NEF
ron@ronaldrichards.com, morani@ronaldrichards.com

United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov